Richard Chiew Vee Ching v Lembaga Pencegahan Jenayah Malaysia & Ors

HIGH COURT (KUALA LUMPUR) — CRIMINAL APPLICATION NO WA-44–185–07 OF 2021
COLLIN SEQUERAH J
6 JANUARY 2022

Criminal Procedure — Habeas corpus — Detention under Prevention of Crime Act 1959 ('POCA') — Application for writ of habeas corpus to be issued against detention order under s 19A(1) of POCA — Whether there was contradiction reg 5(4) of the Prevention of Crime (Advisory Board Procedure) Regulations 2014 — Whether reg 5(4) of Prevention of Crime (Advisory Board Procedure) Regulations 2014 permissive or mandatory — Whether advisory board had powers to exclude presence of detainee and his counsel at representation hearing — Whether detainee accorded with right to be heard — Whether detainee's statement ought to be supplied upon request — Whether writ of habeas corpus could be directed against remand order which had expired — Whether there was non-compliance of ss 4(1)(a), 4(2)(a) of the POCA and art 151(1) of the Federal Constitution — Federal Constitution art 151 — Prevention of Crime Act 1959 ss 4(1)(a), 4(2)(a), 15B, 19A(1) & 21A — Prevention of Crime (Advisory Board Procedure) Regulations 2014 regs 3, 5(4) & 9

This was the applicant's application for writ of habeas corpus to be issued against his detention order dated 10 December 2020 for a period of two years under s 19A(1) of the Prevention of Crime Act 1959 ('the POCA'). The application was based on four grounds: (a) failure to prove that one ASP Rasha was a qualified person to conduct the applicant's representation hearing and consequently ran foul of reg 5(4) of the Prevention of Crime (Advisory Board Procedure) Regulations 2014 ('the 2014 Regulations') ('the first issue'); (b) failure to supply a copy of the applicant's statement notwithstanding a request made which resulted in non-compliance with reg 3 of the 2014 Regulations and art 151(1)(a) of the Federal Constitution ('the Constitution') ('the second issue'); (c) non-compliance with s 4(1)(a) of the POCA read together with art 151(1) of the Constitution due to the failure to attach the magistrates remand order under s 4(1)(a) and (2)(a) of the POCA and failure to prove that the magistrate had examined and considered the written statement of facts by ASP Mani Arasu (the police officer who had lodged a police report in relation to the applicant's arrest and detention) in the process of issuing the remand order for the period of 21 days ('the third issue'); and (d) non-compliance with s 4(2)(a) of the POCA read together with art 151(1) of the Constitution for failure to attach the magistrates remand order under s 4(2)(a) of the POCA and failure to prove that the magistrate had examined and

considered the written statement of ASP Mani Arasu and the deputy public prosecutor in the process of issuing the remand order for the period of 38 days ('the fourth issue').

Held, dismissing the application:

(1) The jurisdiction of the court in hearing an application for habeas corpus under the POCA was set out in s 15B. Based on the said provision, only when there was any non-compliance with the procedure that the court could entertain and allow such application (see paras 44–45).

(2) Given the permissive nature of the phrase 'may' employed in reg 5(4) of the 2014 Regulations as well as the discretion given to the advisory board under reg 9 of the 2014 Regulations which stated that the advisory board may regulate its own procedure in any matter not provided for by the 2014 Regulations and the fact that no prejudice was occasioned to the applicant, the court found that the contention of the applicant in respect of the first issue was without merit. Further, considering the permissive nature of the phrase 'may' used in reg 5(4), the said regulation did not apply to the exclusion of reg 9, to the effect that the principle 'generalia specialibus derogant' did not apply in these circumstances (see paras 58–59).

(3) The advisory board was well within its rights and powers to regulate its own procedures and to also rely upon the provisions of reg 9 of the 2014 Regulations and s 21A of the POCA in deciding to exclude the presence of the applicant and his counsel at the representation hearing. Further, based on the evidence, the applicant and his counsel were requested to leave after having concluded giving evidence and making submissions. The applicant had, therefore, been accorded the full extent of his rights to be heard at the said hearing (see paras 60–65).

(4) In respect of the second issue, there was no provision or stipulation either in the 2014 Regulations or the Constitution that mandated the supply of the applicant's statement. The request for the applicant's statement was made after the hearing of the representation on 16 February 2021. Therefore, it was difficult for the court to see how the applicant was denied a fair and effective representation when the need of his statement was not viewed as indispensable at the material time. In addition, s 21A of the POCA permitted non-disclosure of certain facts or documents on grounds of it being against public interest and art 151(3) of the Constitution permitted non-disclosure where such disclosure would be against the national interest. Based on the above reasons, there was no merit in the second issue (see paras 67, 73, 75, 78 & 81).

(5) The court was bound by the decision in *Goh Leong Yong v ASP Khairul Fairoz bin Rodzuan & Ors* [2021] 5 MLJ 474 ('Goh Leong Yong') which

furnished written grounds for holding that *Mohd Faizal bin Haris v Timbalan Menteri Dalam Negeri Malaysia & Ors* [2006] 1 MLJ 309 and *L Rajanderan a/l R Letchumanan v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2018] supp MLJ 393 were still good law. Based on the above authorities, the court held that the application for a writ of habeas corpus must be directed against the current detention order and not against the remand order which had expired. The court was also bound by the decision in *Goh Leong Yong* which held that the 'Guidelines' pronounced in the earlier decision in *Zaidi bin Kanapiah v ASP Khairul Fairoz bin Rodzuan and other cases* [2021] 3 MLJ 759 were over and above what was required of the magistrate in issuing the remand order under s 4(1)(a) of the POCA and therefore not mandatory. In the premises, there was no non-compliance with s 4(1)(a) and 4(2)(a) of the POCA read together with art 151(1) of the Constitution (see paras 96–99).

[Bahasa Malaysia summary

Ini adalah permohonan pemohon untuk writ habeas corpus dikeluarkan terhadap perintah tahanannya bertarikh 10 Disember 2020 untuk tempoh dua tahun di bawah s 19A(1) Akta Pencegahan Jenayah 1959 ('APJ'). Permohonan tersebut dibuat berdasarkan empat alasan: (a) kegagalan untuk membuktikan bahawa seorang ASP Rasha adalah orang yang layak untuk menjalankan pendengaran representasi pemohon dan seterusnya melanggar peraturan 5(4) Peraturan-Peraturan Pencegahan Jenayah (Tatacara Lembaga Penasihat) 2014 ('Peraturan 2014') ('isu pertama'); (b) kegagalan untuk membekalkan salinan kenyataan pemohon walaupun permohonan telah dibuat yang mengakibatkan ketidakpatuhan peraturan 3 Peraturan 2014 dan perkara 151(1)(a) Perlembagaan Persekutuan ('Perlembagaan') ('isu kedua'); (c) ketidakpatuhan terhadap s 4(1)(a) APJ yang dibaca bersama dengan perkara 151(1) Perlembagaan kerana kegagalan untuk menyertakan perintah reman majistret di bawah s 4(1)(a) dan (2)(a) APJ dan kegagalan untuk membuktikan bahawa majistret telah memeriksa dan mempertimbangkan kenyataan fakta bertulis oleh ASP Mani Arasu (pegawai polis yang telah membuat laporan polis berhubung penangkapan dan penahanan pemohon) dalam proses mengeluarkan perintah reman untuk tempoh 21 hari ('isu ketiga'); dan (d) ketidakpatuhan terhadap s 4(2)(a) APJ yang dibaca bersama dengan perkara 151(1) Perlembagaan kerana kegagalan untuk melampirkan perintah reman majistret di bawah s 4(2)(a) APJ dan kegagalan untuk membuktikan bahawa majistret telah memeriksa dan mempertimbangkan kenyataan bertulis ASP Mani Arasu dan timbalan pendakwa raya dalam proses mengeluarkan perintah reman untuk tempoh 38 hari ('isu keempat').

Diputuskan, menolak permohonan:

(1) Bidang kuasa mahkamah dalam mendengar permohonan untuk habeas

corpus di bawah APJ dinyatakan dalam s 15B. Berdasarkan peruntukan tersebut, hanya apabila terdapat apa-apa ketidakpatuhan terhadap prosedur yang membolehkan mahkamah untuk mendengar dan membenarkan permohonan tersebut (lihat perenggan 44–45).

(2) Mengambil kira sifat permisif frasa 'boleh' digunakan dalam peraturan 5(4) Peraturan 2014 serta budi bicara yang diberikan kepada lembaga penasihat di bawah peraturan 9 Peraturan 2014 yang menyatakan bahawa lembaga penasihat boleh membuat prosedurnya sendiri dalam mana-mana perkara yang tidak diperuntukkan oleh Peraturan 2014 dan fakta bahawa tiada prejudis yang ditimbulkan kepada pemohon, mahkamah mendapati bahawa hujahan pemohon berkenaan dengan isu pertama adalah tanpa merit. Selanjutnya, memandangkan sifat permisif frasa 'boleh' yang digunakan dalam peraturan 5(4), peraturan tersebut tidak terpakai untuk mengecualikan peraturan 9, dengan kesan bahawa prinsip 'generalia specialibus derogant' tidak terpakai dalam keadaan ini (lihat perenggan 58–59).

(3) Lembaga penasihat berada dalam hak dan kuasanya untuk membuat prosedurnya sendiri dan juga bergantung pada peruntukan peraturan 9 Peraturan 2014 dan s 21A APJ dalam memutuskan untuk mengecualikan kehadiran pemohon dan peguamnya semasa pendengaran representasi. Selanjutnya, berdasarkan keterangan, pemohon dan peguamnya diminta keluar selepas selesai memberi keterangan dan membuat penghujahan. Oleh itu, pemohon telah diberikan keseluruhan haknya untuk didengar pada perbicaraan tersebut (lihat perenggan 60–65).

(4) Berkenaan dengan isu kedua, tiada peruntukan atau ketetapan sama ada dalam Peraturan 2014 atau Perlembagaan yang mewajibkan pembekalan kenyataan pemohon. Permohonan untuk kenyataan pemohon dibuat selepas perbicaraan representasi pada 16 Februari 2021. Oleh itu, adalah sukar bagi mahkamah untuk melihat bagaimana pemohon dinafikan representasi yang adil dan berkesan apabila keperluan kenyataannya tidak dilihat sebagai sesuatu yang amat diperlukan pada masa yang material. Di samping itu, s 21A APJ membenarkan ketidakdedahan fakta atau dokumen tertentu atas alasan ia bertentangan dengan kepentingan awam dan perkara 151(3) Perlembagaan membenarkan ketidakdedahan di mana pendedahan tersebut akan bertentangan dengan kepentingan negara. Berdasarkan alasan-alasan di atas, tiada merit dalam isu kedua (lihat perenggan 67, 73, 75, 78 & 81).

(5) Mahkamah terikat dengan keputusan dalam *Goh Leong Yong v ASP Khairul Fairoz bin Rodzuan & Ors* [2021] 5 MLJ 474 ('Goh Leong Yong') yang memberikan alasan bertulis untuk menyatakan bahawa *Mohd Faizal bin Haris v Timbalan Menteri Dalam Negeri Malaysia & Ors* [2006] 1 MLJ 309 dan *L Rajanderan a/l R Letchumanan v Timbalan*

Menteri Dalam Negeri, Malaysia & Ors [2018] supp MLJ 393 adalah undang-undang yang masih terpakai. Berdasarkan autoriti-autoriti di atas, mahkamah memutuskan bahawa permohonan writ habeas corpus mesti ditujukan kepada perintah tahanan semasa dan bukan terhadap perintah reman yang telah tamat tempoh. Mahkamah juga terikat dengan keputusan di dalam kes *Goh Leong Yong* yang memutuskan bahawa 'Garis Panduan' yang diberikan dalam keputusan awal dalam kes *Zaidi bin Kanapiah v ASP Khairul Fairoz bin Rodzuan and other cases* [2021] 3 MLJ 759 telah melebihi apa yang dikehendaki daripada majistret dalam mengeluarkan perintah reman di bawah s 4(1)(a) APJ dan oleh itu tidak mandatori. Berdasarkan premis tersebut, tiada ketidakpatuhan terhadap s 4(1)(a) dan 4(2)(a) APJ yang dibaca bersama dengan perkara 151(1) Perlembagaan (lihat perenggan 96–99).]

Cases referred to

Amirul Syuib bin Sulaiman lwn Timbalan Menteri Dalam Negeri, Malaysia dan lain-lain [2021] MLJU 274; [2021] 1 LNS 226, HC (refd)

Chua Kian Voon v Menteri Dalam Negeri Malaysia & Ors [2020] 1 MLJ 351; [2020] 1 AMR 1; [2020] 1 CLJ 747, FC (distd)

Dhinesh Tanapil v Lembaga Pencegahan Jenayah & Ors (Criminal Appeal No OS(HC)-12–01 of 2021 (B)) (unreported) (refd)

Edwin N Robert v Lembaga Pencegahan Jenayah Dan Dua Lagi (Criminal Application No 05(HC)–53–03 of 2021 (B)) (unreported), FC (refd)

Elvin Ooi Shi Kai v Lembaga Pencegahan Jenayah & Ors (Criminal Application No OS(HC)-78–04 of 202 (K)) (unreported) (refd)

Goh Leong Yong v ASP Khairul Fairoz bin Rodzuan & Ors [2021] 5 MLJ 474; [2021] 8 CLJ 331, FC (folld)

Hamsyaini bin Hamzah v Timbalan Menteri Dalam Negeri & Ors [2016] 1 LNS 1724, HC (distd)

L Rajanderan a/l R Letchumanan v Timbalan Menteri Dalam Negeri, Malaysia & Ors [2018] Supp MLJ 393; [2010] 7 CLJ 653, FC (folld)

Malaysian Motor Insurance Pool v Tirumeniyar a/l Singara Veloo [2020] 1 MLJ 440; [2019] 10 CLJ 731, FC (refd)

Mohd Faizal bin Haris v Timbalan Menteri Dalam Negeri Malaysia & Ors [2006] 1 MLJ 309; [2005] 4 CLJ 613, FC (refd)

Mohd Najib bin Yusof v Timbalan Menteri Dalam Negeri, Malaysia & Anor [2016] MLJU 1853; [2016] 1 LNS 374 (distd)

Rovin Joty a/l Kodeeswaran v Lembaga Pencegahan Jenayah & Ors and other appeals [2021] 2 MLJ 822; [2021] 4 CLJ 1, FC (refd)

Tan Seng Kuan v TMDN (Criminal Appeal No OS(HC)-33–02 of 2019) (unreported), CA (distd)

Tee Jun Wei lwn Inspektor Parthiban a/l Suntharam dan lain-lain [2021] MLJU 1060; [2021] 8 CLJ 127, HC (refd)

Theresa Lim Chin Chin & Ors v Inspector General of Police [1988] 1 MLJ 293, SC (refd)

Vishnu a/l Telagan v Timbalan Menteri Dalam Negeri, Malaysia & Ors [2019] 6 MLJ 1; [2019] 9 CLJ 177, FC (refd)
Yap Chian Loon v Timbalan Menteri Keselamatan Dalam Negeri, Malaysia And Anor [2007] MLJU 399, HC (refd)
Zaidi bin Kanapiah v ASP Khairul Fairoz bin Rodzuan and other cases [2021] 3 MLJ 759; [2021] 5 CLJ 581, FC (refd)

Legislation referred to

Courts of Judicature Act 1964 Schedule
Dangerous Drugs (Special Preventive Measures) Act 1985 s 4
Federal Constitution art 151, 151(1), (1)(a), (3)
Habeas Corpus Acts of 1640 and 1679 [UK]
Prevention of Crime Act 1959 ss 3(1), (1A), 4, 4(1), (1)(a), (2), (2)(a), 4A, 9, 10(2), 10A(2)(a), 12(1), 19A(1), 21A, First Schedule, Part I, paras 1, 2
Prevention of Crime (Advisory Board Procedure) Regulations 2014 regs 3, 3(1), (2), 5(4), 9, 9(1), (2), (2)(b), 11(1), 15B, Forms 1, 2, 3
Rules of Court 2012 O 53
Specific Relief Act 1950 Part 2, Chapter VIII

Evelyn Cheong Phing (Wan Zaleha bt Abdul Wahab and Naizatul Zamrina bt Karizaman with her) (KL Chee & Co) for the applicant.
Nuur lzham bin Ismail (Muhammad bin Sinti and Anasuha Atiqah bt Mat Said with him) (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Collin Sequerah J:

INTRODUCTION

[1] This is an application by the applicant abovenamed for a writ of habeas corpus to be issued against his detention order ('DO') dated 10 December 2020 for a period of two years under s 19A(1) of the Prevention of Crime Act 1959 (Act 297) ('the POCA').

PERTINENT BACKGROUND FACTS

[2] The pertinent facts reveal that on 18 October 2020, the applicant was arrested under s 3(1) of the POCA.

[3] Subsequent to that, a Police Report in relation to his arrest and detention was lodged by Assistant Superintendent of Police (ASP) Mani Arasu a/l Muthusamy (at the material time an Inspector).

[4] The applicant's file was then referred to the deputy public prosecutor

('OPP') pursuant to s 3(1A) of the POCA on 18 October 2020.

[5] On 19 October 2020, the applicant was detained for purposes of investigation for a period of 21 days commencing 19 October 2020 until 8 November 2020 pursuant to s 4(1)(a) of the POCA.

[6] On 27 October 2020, ASP Mani Arasu as the Investigating Officer of the applicant's case, served a copy of the Complete Investigation Report in respect of the applicant pursuant to s 4A of the POCA on the Inquiry Officer, namely, Azfahanim bt Rajaluddin ('IO') and on the Prevention of Crime Board on 18 November 2020.

[7] Subsequently, on 8 November 2020, an order of remand for purposes of investigation for a period of 38 days until 16 December 2020 pursuant to s 4(2)(a) of the POCA was obtained.

[8] On 8 November 2020, an inquiry pursuant to s 9 of the POCA was carried out in respect of the applicant by the IO where Lance Corp Daisy Wong Lin Lin acted as a Mandarin interpreter for the applicant.

[9] After hearing and deliberating on the evidence adduced by the applicant, the evidence of witnesses and evidence in the applicant's file, the IO was satisfied that there existed reasonable grounds to believe that the applicant fell under the category of persons that can be registered under paras 1 and 2, Part I, First Schedule of the POCA.

[10] On 23 November 2020, the IO served a report on the applicant containing the reasons and findings pursuant to s 10(2) of the POCA on the Prevention of Crime Board.

[11] The Prevention of Crime Board received the Complete Report of Investigation in respect of the applicant pursuant to s 4A of the POCA from ASP Mani Arasu on 18 November 2020.

[12] On 23 November 2020, the Prevention of Crime Board received the findings and the report containing the reasons and allegations against the applicant pursuant to s 10(2) of the POCA from the IO.

[13] On 10 December 2020 at 9am, the Prevention of Crime Board met and after considering the findings and the inquiry report in respect of the applicant by the IO produced pursuant to s 10(2) of the POCA, and the Complete Investigation Report against the applicant by the investigating officer pursuant to s 4A of the POCA, the Prevention of Crime Board was satisfied that there

existed reasonable grounds to believe that the applicant fell within the Registrable Categories under para 2, Part I, First Schedule of the POCA.

[14] Consequently, the Prevention of Crime Board confirmed the findings of the IO pursuant to s 10A(2)(a) of the POCA. As a result, the name of the applicant ought to be inserted in the register pursuant to s 12(1) of the POCA.

[15] The Prevention of Crime Board then informed the Assistant Registrar of Crimes ('Timbalan Pendaftar Penjenayah') on 10 December 2020 at 9.30am that it was reported by the IO that there existed reasonable grounds to believe that the applicant fell within the Category of Registrable Persons pursuant to para 2, Part I, First Schedule POCA.

[16] The Prevention of Crime Board also informed that they had confirmed the findings of the IO pursuant to s 10A(2)(a) of the POCA and that the name of the applicant ought to be inserted in the Register pursuant to s 12(1) of the POCA.

[17] Upon being so informed by the Prevention of Crime Board on 10 December 2020, DSP Zuraidah bt Samsudin, the Assistant Registrar of Crimes ('Timbalan Penolong Pendaftar Penjenayah') duly registered the name of the applicant in the Register on 10 December 2020 at 10.30am pursuant to s 12(1) of the POCA.

[18] The Assistant Registrar of Crimes then informed the Prevention of Crimes Board that the name of the applicant was registered in the Register on 10 December 2020.

[19] On 10 December 2020, at 11am, the Prevention of Crime Board met and was satisfied that the registered applicant was a member of a gang involved in serious crimes in Johor Bahru.

[20] Consequently, the applicant fell within the Registrable Categories under para 2, Part I, First Schedule of the POCA. The Prevention of Crimes Board was satisfied that a DO ought to be made against the applicant in the interests of public order and prevention of crime.

[21] Consequently the Prevention of Crime Board issued a DO against the applicant for a period of two years commencing 10 December 2020 at the Special Rehabilitation Centre ('Pusat Permulihan Khas ('PPK')) Pokok Sena, Kedah ('Detention Centre') pursuant to s 19A(1) of the POCA.

[22] The DO, a statement containing the grounds and the statement of facts

upon which the DO was based on were prepared and scrutinised and the DO was signed by Abdul Rasid bin Sudin, the Chairman of the Prevention of Crime Board at the material time.

[23] The DO dated 10 December 2020 together with the reasons upon which the DO was made and the statement of facts against the applicant was served on the applicant by Inspector of Police, Abdul Mustafa Kamal bin Said on 10 December 2020 at 10.30 pm at the D7 Office, Criminal Investigation Department, Police Headquarters Johar South, Johar ('Ibu Pejabat Polis Daerah Johar Bahru Selatan, Johar').

[24] With Lance Corporal Daisy Wong Lin Lin acting as a Mandarin interpreter to the applicant the contents of the said documents were explained and interpreted to the applicant who acknowledged that he understood the same.

[25] The applicant was brought to the PPK, Pokok Sena, Kedah on 11 December 2020. Navinderjit Singh a/l Savinder Singh, the Assistant Director in charge of the PPK Pokok Sena, Kedah met the applicant on 11 December 2020 and explained the contents of the DO and the statement of facts upon which the DO was made.

[26] The applicant was also informed of his right to make a representation against the DO to the Advisory Board pursuant to reg 3(1) of the Prevention of Crime (Advisory Board Procedure) Regulations 2014 ('Regulations').

[27] The applicant was also informed of his rights to engage the services of an advocate and solicitor and of his right to call witnesses. The applicant acknowledged that he understood the explanation and the matters interpreted to him.

[28] The applicant was served three copies of Form 1 that is the Representation in respect of the DO pursuant to sub-reg 3(2) of the Regulations and the contents of Form 1 were explained to him.

[29] The applicant was informed that should he wish to make a representation, he ought to fill up three copies of Form 1 and hand it over to the Secretary of the Advisory Board.

[30] The applicant then filled up and completed Form 1 and the contents explained to him which he acknowledged that he understood. The applicant submitted a copy of Form 1 to the Advisory Board on 13 December 2020.

[31] Mohd Amirul bin Asraf, the Secretary to the Advisory Board ('SULP') acknowledged that Form 1 was received by the Advisory Board on 14 December 2020.

[32] The hearing of the representation by the applicant that was fixed on 19 January 2021 was postponed upon the application of the applicant's counsel as he could not attend the representation hearing on 19 January 2021 and rescheduled to 16 February 2021.

[33] Form 2 which is the Notice of Hearing of Representation was issued by the Advisory Board to inform the applicant of the hearing date fixed for the hearing of the representation.

[34] The Advisory Board also issued Form 3 which is the Notice to Produce the detainee before the Advisory Board on the said rescheduled date.

[35] The representation by the applicant was heard and deliberated upon by the Advisory Board chaired by Puan Aslina bt Joned, the Chairman of the Advisory Board together with two members of the said Board namely, Dato' Ahmad Marzuki and Encik Ghuzlan bin Salleh in the presence of the applicant and his counsel namely, Rosli bin Kamaruddin.

[36] The Advisory Board instructed Constable Muhammad Shafiq bin Mohd Khairul Cheng to act as a Mandarin interpreter in order to assist the applicant in the proceedings.

[37] The applicant gave sworn testimony and called no other witnesses. After hearing and considering the representations made by the applicant on 16 February 2021, the Advisory Board made a recommendation to the Yang Di-Pertuan Agong ('YDPA') pursuant to reg 11(1) of the Regulations on 26 February 2021.

[38] After considering the recommendations of the Advisory Board, the YDPA consented to the recommendations made by the Advisory Board and confirmed the DO.

WRIT OF HABEAS CORPUS (JURISDICTION, PROCEDURE AND JURIDICAL BASIS)

[39] The court's power and jurisdiction to entertain applications for habeas corpus emanates from the inherent powers granted to the superior courts under the Schedule to the Courts of Judicature Act 1964 (Act 91) and the provisions of Chapter VIII of Part 2 of the Specific Relief Act 1950 (Act 137).

[40] The relevant procedure relating to judicial review is governed by O 53 of the Rules of Court 2012.

[41] The rudimentary origins of the writ of habeas corpus can be traced back to the Magna Carta of King John at Runnymede in England which granted all free men immunity from illegal imprisonment although the correlation between the Magna Carta and the writ of habeas corpus only took form with the enactment of the Habeas Corpus Acts of 1640 and 1679 in England.

[42] Across the Atlantic, the founding fathers of America ensured that the concept and rights associated with the writ of habeas corpus featured prominently in the American Constitution.

[43] At home, the Federal Court speaking through Zawawi Salleh FCJ in *Chua Kian Voon v Menteri Dalam Negeri Malaysia & Ors* [2020] 1 MLJ 351; [2020] 1 AMR 1; [2020] 1 CLJ 747 had occasion to reach back into the mists of time and trace the history of the writ in an illuminating expose which I can do no better than to reproduce verbatim as follows:

> ... The term habeas corpus refers most commonly to a specific writ known in full as 'habeas corpus ad subjiciendum': a prerogative writ ordering that a prisoner be brought to the court so that it can be determined whether or not the prisoner is being imprisoned lawfully. *Put simply, a writ of habeas corpus is a challenge to the legality of a prisoner's detention. The words 'habeas corpus' is a Latin law term. Its literal English translation is: 'you have the body'.*
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> *The writ of habeas corpus, described by Blackstone as the 'great and efficacious writ, in all manner of illegal confinement' (see: William Blackstone's Commentaries on the Law of England, 1st Ed, 1765, Vol 3 at p 131), functions as a judicial remedy aimed at preventing the arbitrary use of Executive power to imprison individuals unlawfully.* The use of habeas corpus has roots in English common law dating back to the fourteenth century. *It was first expressed in the Magna Carta of 1215, which stated, 'No free man shall be seized, or imprisoned, or disseized, or outlawed, or exiled, or injured in any way, nor we will enter on him or send against him except by the lawful judgment of his peers, or by the law of the land'.*
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> The habeas corpus remedy is recognised in the countries of the Anglo- American legal system but is generally not found in civil-law countries, although some of them have adopted comparable procedures.
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> In Malaysia, the Federal Constitution makes no explicit provisions for the writ of habeas corpus. *The legal basis for the writ of habeas corpus in Malaysia is Article 5(2) of the Constitution and ss 23, 28, and 365 of the Criminal Procedure Code. In addition, there are statutory provisions in s 25(2) of the Courts of Judicature Act 1964 (along with paragraph 1 of the Schedule)* (see: *Munusamy v Subramaniam & Ors* [1969] 2 MLJ 108; [1969] 1 LNS 112).
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> *The writ of habeas corpus is the fundamental instrument for safeguarding individuals against arbitrary and unlawful state action.* In this connection, the observation made

by Choor Singh J in *Re Onkar Shrian* [1970] 1 MLJ 28; [1969] 1 LNS 155 *as embraced by this court in Kerajaan Malaysia & 2 Ors v Nasharuddin bin Nasir* [2003] 6 AMR 497; [2004] 1 CLJ 81, where the judgment of Choor Singh J in *Re Onkar* (supra) was quoted as below is particularly instructive:

> Where the personal freedom of an individual is wrongly interfered with by another, the release of the former from illegal detention may be effected by habeas corpus. The illegal detention of a subject, that is a detention or imprisonment which is incapable of legal justification, is the basis of jurisdiction in habeas corpus.

The learned judge in *Nasharuddin bin Nasir* also quoted with approval the following passage in *Short & Mellor's Practice on the Crown Side of the King's Bench Division*, 2nd Ed at p 309:

> *The primary object of the writ is for the purpose of bringing the body into court, and therefore, if that is impossible, the writ ought not to issue. It should not be used punitively but only remedially.* In *R v Barnado* [1892] AC 316, Lord Halsbury said that he could not agree to the proposition that if a court is satisfied that illegal detention has ceased before application for the writ has been made, nevertheless the writ might issue in order to vindicate the authority of the court against a person who has once, though not at the time of the issue of the writ, unlawfully detained another or wrongfully parted with the custody of another. In this the rest of the court agreed.

The writ of habeas corpus is a powerful remedy in the sense that it is not discretionary. It is distinct from the prerogative writs such as those of certiorari, prohibition and mandamus. *The writ of habeas corpus must be issued if the court finds that the detenu is illegally or improperly detained.* In *Yeap Hock Seng @ Ah Seng v Minister for Home Affairs, Malaysia & Anor* [1975] 2 MLJ 279, Abdoolcader J (as his Lordship then was) had this to say at p 281:

> The grant of habeas corpus is as of right and not in the discretion of the court as in the case of such extraordinary legal remedies as certiorari, prohibition and mandamus. It is a writ of right against which no privilege of person or place can be of any avail (*R v Pell and Offly* 84 ER 720). The heavy musketry of the law will always be brought to bear upon any suggestion of unlawful invasion or infringement of the personal liberty of an individual in the form of habeas corpus and kindred orders where necessary to grant relief when warranted. It was aptly put in the American case of *State ex rel Evans v Broaddus* 245 Mo 123 at 140 that at least in times of peace every human power must give way to the writ of habeas corpus and no prison door is stout enough to stand in its way.

Where a detainee challenges his detention as being illegal, the burden lies on the detaining authority to show that the detention is legal. In *SK Tangakaliswaran a/l Krishnan v Menteri Dalam Negeri, Malaysia & Ors* [2010] 1 MLJ 149; [2009] 6 CLJ 705, Gopal Sri Ram FCJ held as follows at p 710:

> It is settled law that on an application for habeas corpus the burden of satisfying the court that the detention is lawful lies throughout on the detaining authority. See, *Chng Suan Tze v The Minister of Home Affairs & Ors (and Other Appeals)*

A [1988] 1 LNS 162. *In Mohinuddin v District Magistrate, Beed AIR* 1987 SC 1977*, the Supreme Court of India observed as follows in the context of* Article 221 of the Indian Constitution from which is drawn our Article 151:

B 'It is enough for the detenu to say that he is under wrongful detention, and the burden lies on the detaining authority to satisfy the court that the detention is not illegal or wrongful and that the petitioner is not entitled to the relief claimed. This court on more occasions than one has dealt with the question and it is now well-settled that it is incumbent on the state to satisfy the court that the detention of the petitionerldetenu was legal and in conformity not only with the mandatory provisions of the Act but also strictly in accord with the C constitutional safeguards embodied in Article 22(5)'.

After the party who made the detention succeeded in proving that the detention is in accordance with the law, the onus then shifts to the detainee, especially if he alleges bad faith (see: *Karam Singh v Menteri Hal Ehwal Dalam Negeri Malaysia* [1969] 2 MLJ 129; [1969] 1 LNS 65). *A detainee is entitled to take advantage of any technical defect which has the effect of invalidating the detention* (see: *Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1994] 3 MLJ 285; [1994] 3 AMR 2047; [1994] 4 CLJ 47). Even if the detention was originally made in the exercise of a legal power, the said detention order [may] subsequently becomes invalid over a passage of time (see: *Lui Ah Yong v Superintendent of Prisons, Penang* E [1977] 2 MLJ 226; [1975] 1 LNS 91, *Jayaganesan Ramakrishnan v Timbalan Menteri Dalam Negeri Malaysia & 2 Ors* [2019] 5 AMR 509; [2019] 9 CLJ 725, *Vishnu all Telagan v Timbalan Menteri Dalam Negeri, Malaysia & 2 Ors* [2019] 5 AMR 554; [2019] 9 CLJ 177). (Emphasis added.)

F **[44]** The above passage not only traces the origins of the writ but also encapsulates most of the current applicable law on the subject.

[45] The jurisdiction of the court in hearing an application for habeas corpus under the POCA is set out in s 15B which reads:

G

15B Judicial review of act or decision of Board.

(1) There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Board in the exercise of its discretionary power in accordance with this Act, except in H regard to any question on compliance with any procedural requirement in this Act governing such act or decision.

[46] It is, therefore, only when there is any non-compliance with procedure that the court can entertain and allow such application.

I

ANALYSIS AND FINDINGS

[47] The applicant advanced four grounds in support of his application as follows:

(a) failure to prove that ASP Rasha is a qualified person to conduct the applicant's representation hearing and consequently ran foul of reg 5(4) of the Prevention of Crime (Advisory Board Procedure) Regulations 2014 ('Regulations');

(b) failure to supply a copy of the applicant's statement notwithstanding a request made which resulted in noncompliance with reg 3 of the Prevention of Crime (Advisory Board Procedure) Regulations 2014 ('Regulations') and art 151(1)(a) of the Federal Constitution;

(c) non-compliance with s 4(1)(a) of the POCA read together with art 151(1) of the Federal Constitution due to failure to attach the Magistrates Remand Order under s 4(1)(a) and 4(2)(a) of the POCA and failure to prove that the magistrate had examined and considered the written statement of facts by ASP Mani Arasu in the process of issuing the remand order for the period of 21 days; and

(d) non-compliance with s 4(2)(a) of the POCA read together with art 151(1) of the Federal Constitution for failure to attach the Magistrates Remand Order under s 4(2)(a) of the POCA and failure to prove that the Magistrate had examined and considered the written statement of ASP Mani Arasu and the OPP in the process of issuing the remand order for the period of 38 days.

Failure to prove that ASP Rasha is a qualified person to conduct the applicant's representation hearing and consequently ran foul of reg 5(4) of the Prevention of Crime (Advisory Board Procedure) Regulations 2014 ('Regulations')

[48] The applicant submitted that the act of the Advisory Board in allowing ASP Rasha Azwadi bin Shafii to be present during the representation proceedings had rendered the proceedings flawed for non-compliance with reg 5(4) of the Regulations as the said regulation only provides for the appearance of the OPP during the representation proceedings.

[49] Regulation 5(4) reads:

5 Hearing of representations.

(1) ...

(2) ...

(3) ...

(4) The Public Prosecutor or a Deputy Public Prosecutor may appear at the hearing of the representations to assist the advisory board.

[50] It is not without significance that the phrase used in sub-reg 4 is 'may'. There are several authorities that have held that the use of the phrase 'may' connotes that it is something that is directory and permissive in nature and not mandatory or imperative.

[51] See *Chua Kian Voon v Menteri Dalam Negeri Malaysia & Ors* [2020] 1 MLJ 351; [2020] 1 CLJ 747 and *Yap Chian Loon v Timbalan Menteri Keselamatan Dalam Negeri, Malaysia And Anor* [2007] MLJU 399.

[52] Furthermore, as pointed out by learned senior federal counsel (SFC) for the respondents, there is nothing in the Regulations that prevent or restrict the presence of a 'pengendali'.

[53] It was also pointed out that reg 9(1) of the Regulations that where any matter is not expressly provided for by these regulations, the advisory board may regulate its own procedure.

[54] The said regulation reads as follows:

> 9 Procedure where no express provision
>
> (1) Where any matter is not expressly provided for by these regulations, the advisory board may regulate its own procedure.
>
> (2) Without prejudice to the generality of sub regulation (1), the advisory board may, having regard to considerations of security, public interest or the need to protect a witness or the family or associates of the witness, determine —
>
> (a) whether the evidence of any witness should be heard in the presence of a detained person or his advocate or both;
>
> (b) whether any police officer should be required to appear before the advisory board in the presence of a detained person or his advocate or both; or
>
> (c) whether any document or other information should be made available or disclosed to a detained person or his advocate or both.

[55] It will be noticed that reg 9(2)(b) allows for the presence of a police officer should it be so required.

[56] The Chairman of the Advisory Board, Puan Aslina Joned, in her affidavit in reply stated that pursuant to reg 9(1) and (2) of the Regulations, the Board had utilised their discretion in instructing ASP Rasha to attend and perform the duties of a 'Pegawai Pengendali' in order to present the facts of the applicant's case by way of referring to the written statements of witnesses and that this was endorsed by all the members of the Board.

[57] The said Chairman of the Board had further stated in her affidavit that ASP Rasha had not performed the functions of the DPP or public prosecutor ('PP'). ASP Rasha had also affirmed an affidavit in order to explain the role he performed.

[58] Interestingly enough, the issue of the presence of the said ASP Rasha was also made the subject matter of controversy in another case namely, *Tee Jun Wei lwn Inspektor Parthiban a/l Suntharam dan lain-lain* [2021] MLJU 1060; [2021] 8 CLJ 127, where the court there ruled that his presence had not at all occasioned any prejudice to the applicant at the representation proceedings.

[59] Given the permissive nature of the phrase 'may' employed in reg 5(4) as well as the discretion given to the board under reg 9, as well as the fact that no prejudice was occasioned to the applicant, I find the contention of the applicant in respect of this issue to be without merit.

[60] Further to this, given the permissive nature of the phrase 'may' used in reg 5(4), the said regulation did not apply to the exclusion of reg 9, to the effect that the principle 'generalia specialibus derogant' did not apply in these circumstances.

[61] With regard to the issue raised regarding the request by the advisory board to the applicant and his counsel to leave the representation proceedings, a similar issue was raised in the case of *Amirul Syuib bin Sulaiman lwn Timbalan Menteri Dalam Negeri, Malaysia dan lain-lain* [2021] MLJU 274; [2021] 1 LNS 226, where it was held, inter alia, that reg 9 of the Regulation allowed for the exclusion of the presence of counsel and the applicant in circumstances involving national security.

[62] Further to this, s 21A of the POCA permits non-disclosure of certain facts or documents on grounds of it being against public interest.

[63] The section reads:

> 21A. Disclosure of information.
>
> Nothing in this Act or in any regulations made under this Act shall require the Board, any member of the Board, any Inquiry Officer or any public servant to disclose facts or to produce documents which he considers —
>
> (a) to be against the public interest to disclose or produce; or
>
> (b) would compromise the protection of a witness, or his family or associates.

Similarly, art 151 of the Federal Constitution reads:

> 151 Restrictions on preventive detention.

(1) ...

(a) ...

(b) ...

(2) ...

(3) This Article does not require any authority to disclose facts whose disclosure would in its opinion be against the national interest.

[64] The advisory board was, therefore, well within its rights and powers to regulate its own procedures and to also rely upon the provisions referred to above in deciding to exclude the presence of the applicant and his counsel at the representation hearing.

[65] The affidavit in reply of Mohd Amirul bin Asyraf at para 6, inter alia, stated clearly that the applicant and his counsel were requested to leave after having concluded giving evidence and making submissions.

[66] The applicant had, therefore, been accorded the full extent of his rights to be heard at the said hearing.

Failure to supply a copy of the applicant's statement notwithstanding a request made which resulted in non-compliance with reg 3 of the Prevention of Crime (Advisory Board Procedure) Regulations 2014 ('Regulations') and art 151(1)(a) of the Federal Constitution

[67] The applicant here contends that the failure to supply a copy of his statement has resulted in non-compliance with reg 3 of the Regulations and has also resulted in a denial of a fair and effective representation.

[68] In respect of this issue, I quite agree with the submission raised by the learned SFC that there exists no provision or stipulation either in the Regulations or the Federal Constitution that mandates the supply of the applicant's statement.

[69] Article 151 of the Federal Constitution only requires that a statement of facts upon which the detention is based be provided and that the applicant be given an opportunity of making representations against the detention order as soon as may be practicable.

[70] To that end, the decision of the Federal Court in *L Rajanderan a/l R Letchumanan v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2018] Supp MLJ 393; [2010] 7 CLJ 653 is instructive where it was held that it is only when a statute requires an act to be a condition precedent to the making of a detention order can a valid complaint be made against that detention.

[71] A similar issue was raised in the case of Criminal Application No 05(HC)–53–03 of 2021 (B), *Edwin N Robert v Lembaga Pencegahan Jenayah Dan Dua Lagi* at the Federal Court where the appeal of the applicant was dismissed.

[72] It was also pointed out by the learned SFC that during the course of the representation proceedings on 16 February 2021, the applicant was represented by En Rosli bin Kamaruddin but no such request for the statement of the applicant was made.

[73] According to the affidavit in reply of ASP Mani Arasu, the letter requesting for the statement was made by way of letter dated 30 June 2021 by Messrs KL Chee acting as solicitors for the applicant.

[74] As is evident, this was after the hearing of the representation on 16 February 2021. It is difficult to see, therefore, how the applicant was denied a fair and effective representation when the need for his statement was not viewed as indispensable at the material time.

[75] It was also pointed out by the SFC in which I find myself in agreement with that the cases of *Mohd Najib bin Yusof v Timbalan Menteri Dalam Negeri, Malaysia & Anor* [2016] MLJU 1853; [2016] 1 LNS 374, *Hamsyaini bin Hamzah v Timbalan Menteri Dalam Negeri & Ors* [2016] 1 LNS 1724, *Tan Seng Kuan v TMDN* (Federal Court, Criminal Appeal No OS(HC)-33–02 of 2019 and *Chua Kian Voon v Menteri Dalam Negeri Malaysia & Ors* [2020] 1 MLJ 351; [2020] 1 CLJ 747 all pertain to provisions under the Dangerous Drugs (Special Preventive Measures) Act 1985 which contains an express provision in the form of s 4 of that act relating to the statement of persons including a suspect. No similar provision exists in the POCA. Therefore, those cases can be distinguished.

[76] In any event, s 21A of the POCA permits non-disclosure of certain facts or documents on grounds of it being against public interest.

[77] The section reads:

> 21A Disclosure of information.
>
> Nothing in this Act or in any regulations made under this Act shall require the Board, any member of the Board, any Inquiry Officer or any public servant to disclose facts or to produce documents which he considers —
>
> (a) to be against the public interest to disclose or produce; or
>
> (b) would compromise the protection of a witness, or his family or associates.

[78] In similar vein, art 151 of the Federal Constitution reads:

> 151 Restrictions on preventive detention.
>
> (1) Where any law or ordinance made or promulgated in pursuance of this Part provides for preventive detention —
>
> (a) the authority on whose order any person is detained under that law or ordinance shall, as soon as may be, inform him of the grounds for his detention and, subject to Clause (3), the allegations of fact on which the order is based, and shall give him the opportunity of making representations against the order as soon as may be;
>
> (b) no citizen shall continue to be detained under that law or ordinance unless an advisory board constituted as mentioned in Clause (2) has considered any representations made by him under paragraph (a) and made recommendations thereon to the Yang di-Pertuan Agong within three months of receiving such representations, or within such longer period as the Yang di-Pertuan Agong may allow.
>
> (2) An advisory board constituted for the purposes of this Article shall consist of a chairman, who shall be appointed by the Yang di-Pertuan Agong and who shall be or have been, or be qualified to be, a judge of the Federal Court, the Court of Appeal or a High Court, or shall before Malaysia Day have been a judge of the Supreme Court, and two other members who shall be appointed by the Yang di-Pertuan Agong.
>
> (3) *This Article does not require any authority to disclose facts whose disclosure would in its opinion be against the national interest.* (Emphasis added)

[79] As is clear, art 151(3) permits non-disclosure where such disclosure would be against the national interest. It is also pertinent to make the observation that the decision not to disclose any fact is according to the subjective opinion of the relevant authority.

[80] See also the majority decision in the Federal Court case of *Rovin Joty a/l Kodeeswaran v Lembaga Pencegahan Jenayah & Ors and other appeals* [2021] 2 MLJ 822; [2021] 4 CLJ 1 where both the provisions under s 21A of the POCA and art 151(3) respectively were discussed and where it was held, inter alia, that the relevant authority is not bound to disclose facts which would be against the national interest.

[81] See also *Theresa Lim Chin Chin & Ors v Inspector General of Police* [1988] 1 MLJ 293.

[82] Based upon the reasons aforesaid, I find no merit in the submissions of the applicant in respect of this issue.

Non-compliance with s 4(1)(a) of the POCA read together with art 151(1) of the

Federal Constitution due to failure to attach the magistrates remand order under s 4(1)(a) and 4(2)(a) of the POCA and failure to prove that the magistrate had examined and considered the written Statement of Facts by ASP Mani Arasu in the procees of issuing the remand order for the period of 21 days

Non-compliance with s 4(2)(a) of the POCA read together with art 151(1) of the Federal Constitution for failure to attach the magistrates remand order under s 4(2)(a) of the POCA and failure to prove that the magistrate had exami ned and considered the written statement of ASP Sazali and OPP Adam Mohamed in the process of issuing the remand order for the period of 38 days

[83] Because the issues in (c) and (d) involve similar arguments, they can be conveniently be dealt with together.

[84] The respondents in reply to the issues raised by the applicant in this regard submitted that the affidavit of ASP Mani Arasu provides a sufficient answer to the allegations raised by the applicant.

[85] In particular, the respondents refer to paras 8–10 and 15 wherein it was explained by ASP Mani Arasu that the relevant written statement of facts pertaining to the issuance of the remand order against the applicant pursuant to s 4(1) and (2) respectively was submitted to the magistrate who issued the remand orders accordingly.

[86] The respondents accordingly submitted that the remand orders would not have been issued by the learned magistrate if the written statements pursuant to s 4 were not submitted.

[87] The learned SFC also submitted that it was trite that an application for a writ of habeas corpus must be directed against the current detention order and not against the remand order which had expired on 16 December 2020.

[88] In so arguing, the respondents cited *Mohd Faizal bin Haris v Timbalan Menteri Dalam Negeri Malaysia & Ors* [2006] 1 MLJ 309; [2005] 4 CLJ 613 and *L Rajanderan R Letchumanan v Timbalan Menteri Dalam Negeri Malaysia & Ors* in support.

[89] The ratio in both the above cases were held to be still good law by the majority in the Federal Court case of *Goh Leong Yong v ASP Khairul Fairoz bin Rodzuan & Ors* [2021] 5 MLJ 474; [2021] 8 CLJ 331.

[90] With respect to the issue of certain elements or pre-requisites that must be fulfilled before a remand order is issued as pronounced in the case of *Zaidi*

bin Kanapiah v ASP Khairul Fairoz bin Rodzuan and other cases [2021] 3 MLJ 759; [2021] 5 CLJ 581, the respondent relied upon the majority decision in *Goh Leong Yong* which held that the 'Guidelines' pronounced in *Zaidi Kanapiah* were firstly, 'per incuriam' on the grounds that the issue was never raised at the hearing and secondly, that the 'Guidelines' were over and above what was required of the magistrate in issuing the remand order under s 4(1)(a).

[91] I find the above argument by the learned SFC quite compelling for the reasons given. It can be safely concluded that what the majority in *Goh Leong Yong* meant was that the 'Guidelines' were merely just guidelines and did not have the force of law.

[92] Learned counsel for the applicant, however, cited the case of *Dhinesh Tanapil v Lembaga Pencegahan Jenayah & Ors* (Criminal Appeal No OS(HC)-12–01 of 2021 (B)) (unreported) and *Elvin Ooi Shi Kai v Lembaga Pencegahan Jenayah & Ors* (Criminal Application No OS(HC)-78–04 of 202 (K) (unreported) decided by the Federal Court which held a contrary view except that it was pointed out by the Learned SFC that no written grounds were as yet available.

[93] This resulted in learned SFC submitting that without the written grounds it would be impossible to determine with certainty why the court had allowed the applications for habeas corpus in those cases.

[94] In this regard, I refer to the case of *Malaysian Motor Insurance Pool v Tirumeniyar a/l Singara Veloo* [2019] 10 CLJ 731, decided by the Federal Court where it was held as follows:

> (2) *There was no written judgment by the Federal Court in Saw.* Of assistance was the Editorial Note in the reported judgment of the High Court which indicated that the Federal Court reversed the High Court's decision because 'there was no cross-appeal by the respondents against the trial judge's finding that the plaintiff was not a passenger. As such, the learned trial judge should have held that the exceptions to Section II of the policy applied. Hence, the insurer was not liable to indemnify the defendants'. *Without a written judgment, the Federal Court's reasons for allowing the appeal was purely speculative and could not be regarded as authoritative and/or binding. The Court of Appeal did not err when it did not consider itself bound to follow Saw.* (paras 79 & 82) (Emphasis added)

[95] See also *Vishnu a/l Telagan v Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2019] 6 MLJ 1; [2019] 9 CLJ 177.

[96] Without the benefit of a written judgement, this court would do best to err on the side of caution and refrain from indulging in second guessing what

the reasons for the decisions in *Dhinesh Tanapil* and *Elvin Ooi Shi Kai* were.

[97] I consider myself thus bound by the decision in *Goh Leong Yong v ASP Khairul Fairoz Rodzuan & Ors* which furnished written grounds for holding that *Mohd Faizal Haris v Timbalan Menteri Dalam Negeri, Malaysia & Ors* and *L Rajanderan R Letchumanan v Timbalan Menteri Dalam Negeri Malaysia & Ors* is still good law.

[98] I, therefore, find that the application for a writ of habeas corpus must be directed against the current detention order and not against the remand order which had expired.

[99] I am also bound by the decision in *Goh Leong Yong v ASP* which held that the 'Guidelines' pronounced in the earlier decision in *Zaidi bin Kanapiah v ASP Khairul Fairoz Rodzuan & Ors And Other Appeals* that the 'Guidelines' were over and above what was required of the magistrate in issuing the remand order under s 4(1)(a) and therefore not mandatory.

[100] In the premises, there was no non-compliance with ss 4(1)(a) and (2)(a) of the POCA read together with art 151(1) of the Federal Constitution.

DECISION

[101] Based upon the reasons given above, this application for a writ of habeas corpus to issue is dismissed.

Application dismissed.

Reported by Dzulqarnain Ab Fatar